Reg. No. KL/TV(N)/12



KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

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GOVERNMENT OF KERALA

Law (Legislation-B) Department

NOTIFICATION

No. 3561|Leg. B1|85|Law. *Dated, Trivandrum, 12th August, 1985|
21st Sravana, 1907.*

The following Ordinance promulgated by the Governor on the 12th day of August, 1985, is hereby published for general information.

By order of the Governor,

P. P. MATHAI,
Special Secretary (Law).

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS,
TRIVANDRUM, 1985.

33|3432|MC.

ORDINANCE No. 63 OF 1985

THE KERALA PRESERVATION OF TREES ORDINANCE, 1985

Promulgated by the Governor of Kerala in the Thirty-sixth Year of the Republic of India.

AN

ORDINANCE

to provide for the preservation of trees in the State of Kerala.

Preamble.—WHEREAS there has been indiscriminate felling and destruction of trees in the State of Kerala resulting in considerable soil erosion and destruction and loss of the timber wealth of the State;

AND WHEREAS with a view to prevent soil erosion and destruction and loss of the timber wealth in the State, it is necessary to regulate the felling and destruction of trees in the State;

AND WHEREAS the Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Ordinance, 1983 (21 of 1983) was promulgated by the Governor of Kerala on the 17th day of June, 1983 for the above purposes;

AND WHEREAS a Bill to replace the said Ordinance by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 20th day of June, 1983 and ended on the 4th day of August, 1983;

AND WHEREAS in order to keep alive the provisions of the said Ordinance, the Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Ordinance, 1983 (29 of 1983) was promulgated by the Governor of Kerala on the 29th day of August, 1983;

AND WHEREAS a Bill to replace Ordinance 29 of 1983 by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 25th day of November, 1983 and ended on the 20th day of December, 1983;

AND WHEREAS under sub-clause (a) of clause (2) of article 213 of the Constitution of India, Ordinance 29 of 1983 ceased to operate on the 6th day of January, 1984;

AND WHEREAS on a review of the implementation of the provisions of the said Ordinance, the Government were satisfied that it was not necessary to impose regulation on cultivation in hill areas;

AND WHEREAS in order to keep alive the other provisions of the said Ordinance, the Kerala Preservation of Trees Ordinance, 1984 (15 of 1984) was promulgated by the Governor of Kerala on the 15th day of February, 1984;

AND WHEREAS a Bill to replace Ordinance 15 of 1984 by an Act of the Legislature could not be introduced in, and passed by, the Legislative

Assembly of the State of Kerala during its session which commenced on the 2nd day of March, 1984 and ended on the 27th day of March, 1984;

AND WHEREAS in order to keep alive the provisions of Ordinance 15 of 1984, the Kerala Preservation of Trees Ordinance, 1984 (31 of 1984) was promulgated by the Governor of Kerala on the 13th day of April, 1984;

AND WHEREAS a Bill to replace Ordinance 31 of 1984 by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 18th day of June, 1984 and ended on the 27th day of July, 1984;

AND WHEREAS in order to keep alive the provisions of Ordinance 31 of 1984, the Kerala Preservation of Trees Ordinance, 1984 (47 of 1984) was promulgated by the Governor of Kerala on the 28th day of July, 1984;

AND WHEREAS a Bill to replace Ordinance 47 of 1984 by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 22nd day of October, 1984 and ended on the 5th day of November, 1984;

AND WHEREAS in order to keep alive the provisions of Ordinance 47 of 1984, the Kerala Preservation of Trees Ordinance, 1984 (96 of 1984) was promulgated by the Governor of Kerala on the 3rd day of December, 1984;

AND WHEREAS a Bill to replace Ordinance 96 of 1984 by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 6th day of March, 1985 and ended on the 11th day of April, 1985;

AND WHEREAS in order to keep alive the provisions of Ordinance 96 of 1984, the Kerala Preservation of Trees Ordinance, 1985 (36 of 1985). was promulgated by the Governor of Kerala on the 17th day of April, 1985;

AND WHEREAS a Bill to replace Ordinance 36 of 1985 by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 1st day of July, 1985 and ended on the 31st day of July, 1985;

AND WHEREAS under sub-clause (a) of clause (2) of article 213 of the Constitution of India, Ordinance 36 of 1985 will cease to operate on the 12th day of August, 1985;

AND WHEREAS difficulties will arise if the provisions of that Ordinance are not kept alive;

AND WHEREAS the Legislative Assembly of the State of Kerala is not in session and the Governor of Kerala is satisfied that circumstances exist which render it necessary for him to take immediate action;

AND WHEREAS instructions from the President have been obtained in pursuance of the proviso to clause (1) of article 213 of the Constitution of India;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Kerala is pleased to promulgate the following Ordinance:—

1. *Short title, extent and commencement.*—(1) This Ordinance may be called the Kerala Preservation of Trees Ordinance, 1985.

(2) It extends to the whole of the State of Kerala.

(3) It shall be deemed to have come into force on the 18th day of June, 1983.

2. *Definitions.*—In this Ordinance, unless the context otherwise requires,—

(a) "appellate authority" means an appellate authority appointed under sub-section (2) of section 3;

(b) "authorised officer" means an officer appointed under sub-section (1) of section 3;

(c) "owner" in relation to any land, includes a mortgagee, lessee or other person having right to possession and enjoyment of that land;

(d) "prescribed" means prescribed by rules made under this Ordinance;

(e) "tree" means any of the following species of trees, namely:—

Sandalwood (Santalum album), Teak (Tectona grandis), Rosewood (Dalbergia latifolia), Irul (Xylia Xylocarpa), Thempavu (Terminalia tomantosa), Kampakam (Hopea parviflora), Chempakam (Michelia chempaca), Chadachi (Grewia tiliaefolia), Chandana vempu (Cedrela toona), Cheeni (Tetrameles nudiflora).

3. *Authorised officers and appellate authorities.*—(1) The Government may, by notification in the Gazette, appoint such officers as they think fit to be authorised officers for the purposes of this Ordinance and may assign to them such local limits as the Government think fit.

(2) The Government may, by notification in the Gazette, appoint such officers as they think fit to be appellate authorities for the purposes of this Ordinance and may assign them such local limits as the Government think fit.

4. *Restriction regarding cutting, etc., of trees.*—(1) No person shall, without the previous permission in writing of the authorised officer, cut, uproot or burn, or cause to be cut, uprooted or burnt, any tree.

(2) The permission under sub-section (1) shall not be refused if—

(a) the tree constitutes a danger to life or property; or

(b) the tree is dead, diseased or windfallen:

Provided that where permission to cut a tree is granted on the ground specified in clause (a) or clause (b), the authorised officer shall impose as a condition for the grant of such permission the effective regeneration of an equal number of the same or other suitable species of trees; or

(c) such cutting is to enable the owner of the land in which the tree stands to use the area cleared or the timber cut for the construction of a building for his own use.

(3) No person shall cut or otherwise damage, or cause to be cut or otherwise damaged, the branch of any tree:

Provided that the provisions of this sub-section shall not be deemed to prevent the pruning of any tree as required by ordinary agricultural or horticultural practices.

(4) No person shall, without the previous permission in writing of the authorised officer, destroy any plant of any tree or do any act which diminishes the value of any such plant.

(5) Nothing contained in sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) shall apply in respect of any tree or plant in the compound of any residential building:

Provided that where such compound exceeds 0.8 hectare in extent, the provisions of this sub-section shall apply only in respect of an extent of 0.8 hectare immediately surrounding the residential building.

5. *Prohibition of cutting of tree in notified areas.*—(1) Notwithstanding anything contained in any law for the time being in force, or in any judgment, decree or order of any court, tribunal or other authority, or in any agreement or other arrangement, the Government may, with a view to preserving the tree growth in private forests or in the Cardamom Hills Reserve or in any other areas cultivated with cardamom, by notification in the Gazette, direct that no tree standing in any such area specified in the notification shall be cut, uprooted or burnt except on the ground that—

(a) the tree constitutes a danger to life or property; or

(b) the tree is dead, diseased or windfallen:

Provided that the provisions of this sub-section shall not be deemed to prevent the pruning of any tree as required by ordinary agricultural or horticultural practices.

(2) No person shall, without the previous permission in writing of the authorised officer, cut, uproot or burn, or cause to be cut, uprooted or burnt any tree in any area specified in the notification under sub-section (1) on any of the grounds specified therein.

Explanation I.—For the purposes of this section, the term "tree" shall include any species of tree.

Explanation II.—For the purposes of sub-section (2), the expression "private forest" means any land which immediately before the 10th day of May, 1971, was a private forest as defined in the Kerala Private Forests (Vesting and Assignment) Act, 1971.

6. *Application for permission.*—(1) Every application for permission under section 4 or section 5 shall be in such form and shall contain such particulars as may be prescribed and shall be made to the authorised officer.

(2) The procedure to be followed by the authorised officer in granting or refusing permission under section 4 or section 5 shall be such as may be prescribed.

7. *Appeal.*—(1) Any person aggrieved by an order refusing to grant permission under section 4 or section 5 may, within ninety days of the receipt of such order, prefer an appeal to the appellate authority:

Provided that the appellate authority may admit an appeal preferred after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(2) An appeal under sub-section (1) shall be in such form and shall contain such particulars as may be prescribed.

(3) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard, pass such order thereon as it thinks fit.

8. *Revision.*—(1) The Government may, either *suo motu* or on application by any person aggrieved by an order of the appellate authority under section 7, call for and examine the record of any order passed by the appellate authority for the purpose of satisfying themselves as to the legality, propriety or regularity of such order and pass such order thereon as they think fit.

(2) The Government shall not of their own motion revise any order under sub-section (1) if that order has been passed more than three months previously.

(3) An application under sub-section (1) by an aggrieved person shall be made within a period of sixty days from the date on which the order of the appellate authority was communicated to him:

Provided that the Government may admit an application made after the expiry of the said period of sixty days, if they are satisfied that the applicant had sufficient cause for not making the application within that period.

(4) An order prejudicial to a person shall not be passed under sub-section (1) unless that person has been given a reasonable opportunity of showing cause against such order.

Explanation.—An order declining to interfere shall, for the purposes of this sub-section, be deemed to be an order prejudicial to a person.

9. *Penalties.*—Whoever contravenes any of the provisions of section 4 or sub-section (2) of section 5 or a direction contained in a notification under sub-section (1) of section 5 or any of the terms and conditions subject to which a permission has been granted under this Ordinance shall be punishable,—

(a) in the case of first offence, with imprisonment for a term which shall not be less than six months but which may extend to two years, and with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees; and

(b) in the case of a second or subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years, and with fine which shall not be less than one thousand rupees but which may extend to five thousand rupees

10. *Offences by companies.*—(1) Where an offence under this Ordinance has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the

conduct of its business, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm, society or other association of individuals; and

(b) "director",—

(i) in relation to a firm, means a partner in the firm;

(ii) in relation to a society or other association of individuals, means the person who is entrusted, under the rules of the society or other association, with the management of the affairs of the society or other association, as the case may be.

11. *Powers of authorised officers and appellate authorities.*—Every authorised officer and appellate authority shall, for the purpose of performing his or its functions under this Ordinance, have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavit; and

(d) such other matters as may be prescribed.

12. *Powers of entry and inspection.*—The authorised officer or any other officer generally or specially authorised by the Government in this behalf may, with such assistants, if any, being persons in the service of the Government, as he thinks fit, at all reasonable times enter upon any land for the purpose of ascertaining whether any of the provisions of this Ordinance or any of the terms and conditions subject to which any permission has been granted under this Ordinance has been contravened.

13. *Power to seize timber and other articles involved in commission of offence.*—(1) Where any officer of the Forest Department not below the rank of Forester or any Police Officer not below the rank of Sub Inspector has reason

to believe that any tree has been cut in contravention of section 4 or sub-section (2) of section 5 or a direction contained in a notification under sub-section (1) of section 5, he may seize the timber of such tree together with all tools, ropes, chains and other articles used in the commission of such offence and all boats, vehicles and cattle used for carrying such timber.

Explanation.—The terms "boat" and "vehicle" in this section, section 14 and section 15 shall include all the articles and machinery kept in the boat or vehicle, as the case may be, whether fixed to the same or not.

(2) Every officer seizing any timber under sub-section (1) shall place on such timber a mark indicating that the same has been so seized and shall, as soon as may be, make a report of such seizure to the authorised officer.

(3) On receipt of a report under sub-section (2), the authorised officer shall,—

(a) if he is satisfied that the timber mentioned in such report is of any tree cut in contravention of section 4 or sub-section (2) of section 5 or a direction contained in a notification under sub-section (1) of section 5, make a report of such seizure to the Judicial Magistrate of the First Class having jurisdiction over the area in which such seizure has been made;

(b) if he is not so satisfied, make a report of such seizure to such authority as may be prescribed.

(4) The authority to which a report is made under clause (b) of sub-section (3) shall,—

(a) if it is satisfied that the timber mentioned in such report is of any tree cut in contravention of section 4, or sub-section (2) of section 5 or a direction contained in a notification under sub-section (1) of section 5, make a report of the seizure of such timber to the Judicial Magistrate of the First Class having jurisdiction over the area in which such seizure has been made;

(b) if it is not so satisfied, order that such timber and any tool, rope, chain or other article or any boat, vehicle or cattle seized along with it shall be returned to the person from whom they were seized.

14. *Power to release property seized under section 13.*—The authorised officer may release any timber and any tool, rope, chain or other article or any boat, vehicle or cattle seized under section 13 and in respect of which a report has been made to the Judicial Magistrate of the First Class under clause (a) of sub-section (3) or clause (a) of sub-section (4) of that section, on the execution by the owner thereof of a bond for the production of the property so released, if and when so required, before such Magistrate.

15. *Procedure by Magistrate.*—Upon the receipt of a report under clause (a) of sub-section (3) or clause (a) of sub-section (4) of section 13, the Magistrate shall take such measures as may be necessary for the trial of the accused and the disposal of the timber and any tool, rope, chain or other article or any boat, vehicle or cattle seized along with it, according to law.

16. *Procedure as to perishable property seized under section 13.*—(1) Notwithstanding anything hereinbefore contained,—

(a) the Magistrate to whom a report is made under section 13 may direct the sale of any property seized under that section, which is subject to speedy and natural decay; and

(b) if, in the opinion of the authorised officer, it is not possible to obtain the orders of the Magistrate under clause (a) in time, such officer may sell the property himself, remit the sale proceeds into the nearest Government Treasury and make a report of such seizure, sale and remittance to the Magistrate referred to in the said clause, and thereupon such Magistrate shall take such measures as may be necessary for the trial of the accused.

(2) The Magistrate may deal with the proceeds of the sale of any property sold under clause (a) or clause (b) of sub-section (1) in the same manner as he might have dealt with the property if it had not been sold.

17. *Saving of power to release property seized.*—Nothing hereinbefore contained shall be deemed to prevent the authorised officer from directing at any time the immediate release of any property seized under section 13 and the withdrawal of any charge made in respect of such property:

Provided that the powers under this section shall be exercised by the authorised officer only for good and sufficient reasons to be recorded in writing and with the previous approval in writing of the Chief Conservator of Forests.

18. *Institution of prosecution.*—No prosecution shall be instituted against any person without the sanction of the authorised officer.

19. *Cognizance of offences.*—No court inferior to that of a Judicial Magistrate of the First Class shall try any offence under this Ordinance.

20. *Bar of jurisdiction of civil courts.*—No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Ordinance required to be settled, decided or dealt with or to be determined by any officer or authority or the Government.

21. *Indemnity.*—No suit, prosecution or other legal proceedings shall lie against the Government or any officer or authority or any other person for anything which is in good faith done or purporting to have been done under this Ordinance or any rule or order made thereunder.

22. *Restriction regarding cutting, etc. of trees in future assignments.*—Notwithstanding anything contained in any law for the time being in force, any assignment after the commencement of this Ordinance, of land belonging to the Government, under any law for the time being in force shall be subject to the condition that the assignee shall not, without the previous permission in writing of the authorised officer, cut, uproot or burn, or cause to be cut,

Government of Kerala
1985

Reg. No. KL/TV(N)/12



KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

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GOVERNMENT OF KERALA

Law (Legislation-C) Department

NOTIFICATION

No. 10504|Leg. C3|84|Law. *Dated, Trivandrum, 12th August, 1985| 21st Sravana, 1907.*

The following Ordinance promulgated by the Governor on the 12th day of August, 1985, is hereby published for general information.

By order of the Governor,

K. SREEDHARAN,
Law Secretary.

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1985.

33|3438|MC.

ORDINANCE No. 69 OF 1985

THE KERALA CASHEW FACTORIES (ACQUISITION) AMENDMENT ORDINANCE, 1985

Promulgated by the Governor of Kerala in the Thirty-sixth Year of the Republic of India.

AN

ORDINANCE

to amend the Kerala Cashew Factories (Acquisition) Act, 1974.

Preamble.—WHEREAS the Kerala Cashew Factories (Acquisition) Amendment Ordinance, 1984 (19 of 1984), was promulgated by the Governor of Kerala on the 28th day of February, 1984;

AND WHEREAS a Bill to replace the said Ordinance by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 2nd day of March, 1984 and ended on the 27th day of March, 1984;

AND WHEREAS in order to keep alive the provisions of the said Ordinance, the Kerala Cashew Factories (Acquisition) Amendment Ordinance, 1984 (38 of 1984), was promulgated by the Governor of Kerala on the 13th day of April, 1984;

AND WHEREAS a Bill to replace Ordinance 38 of 1984 by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 18th day of June, 1984 and ended on the 27th day of July, 1984;

AND WHEREAS in order to keep alive the provisions of Ordinance 38 of 1984, the Kerala Cashew Factories (Acquisition) Amendment Ordinance, 1984 (52 of 1984), was promulgated by the Governor of Kerala on the 28th day of July, 1984;

AND WHEREAS a Bill to replace Ordinance 52 of 1984 by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 22nd day of October, 1984 and ended on the 5th day of November, 1984;

AND WHEREAS in order to keep alive the provisions of Ordinance 52 of 1984, the Kerala Cashew Factories (Acquisition) Amendment Ordinance, 1984 (100 of 1984), was promulgated by the Governor of Kerala on the 3rd day of December, 1984;

AND WHEREAS a Bill to replace Ordinance 100 of 1984 by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 6th day of March, 1985 and ended on the 11th day of April, 1985;

AND WHERE AS in order to keep alive the provisions of Ordinance 100 of 1984, the Kerala Cashew Factories (Acquisition) Amendment Ordinance, 1985 (10 of 1985), was promulgated by the Governor of Kerala on the 17th day of April, 1985;

AND WHERAS a Bill to replace Ordinance 10 of 1985 could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 1st day of July, 1985 and ended on the 31st day of July, 1985;

AND WHEREAS under sub-clause (a) of clause (2) of article 213 of the Constitution of India, Ordinance 10 of 1985 will cease to operate on the 12th day of August, 1985;

AND WHEREAS difficulties will arise if the provisions of that Ordinance are not kept alive;

AND WHEREAS the Legislative Assembly of the State of Kerala is not in session and the Governor of Kerala is satisfied that circumstances exist which render it necessary for him to take immediate action;

AND WHEREAS instructions from the President have been obtained in pursuance of the proviso to clause (1) of article 213 of the Constitution of India;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Kerala is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*—(1) This Ordinance may be called the Kerala Cashew Factories (Acquisition) Amendment Ordinance, 1985.

(2) It shall be deemed to have come into force on the 28th day of February, 1984.

2. *Act 29 of 1974 to be temporarily amended.*—During the period of operation of this Ordinance, the Kerala Cashew Factories (Acquisition) Act, 1974 (29 of 1974) (hereinafter referred to as the principal Act), shall have effect subject to the amendments specified in sections 3 to 8.

3. *Amendment of section* 2.—In section 2 of the principal Act,

(i) after clause (d), the following clause shall be inserted, namely:—

"(dd) "Federation" means the Kerala State Co-operative Marketing Federation;";

(ii) after clause (g), the following clause shall be inserted, namely:—

"(h) "workers' co-operative society" or "society" means a co-operative society registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969) and formed with the object of managing a cashew factory which has been closed down or vested under this Act in the Government and of which at least ninety per cent of the members are workmen within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), who have been, immediately before the appointed day, in the employment of the cashew factory.".

4. *Amendment of section* 8.—In section 8 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Notwithstanding anything contained in section 3, the Government may, by order in writing:—

(a) direct that a cashew factory vested in them under this Act shall, instead of continuing to vest in the Government, vest in the Corporation with effect from such date (not being a date earlier than the appointed day) as may be specified in the order; or

(b) entrust a cashew factory vested in them under this Act to the Federation or to a workers' co-operative society or to any other institution approved by the Government in this behalf for management for such period and on such terms and conditions as may be specified in the order.".

5. *Insertion of new section 10A.*—After section 10 of the principal Act, the following section shall be inserted, namely:—

"10A. *Continuance of employees where cashew factory is entrusted to the Federation or a workers' co-operative society or to an institution for management.*—(1) Where a cashew factory vested under this Act in the Government has been entrusted to the Federation or to any other institution approved by the

Government in this behalf under sub-section (1) of section 8 for management, every person who is a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), and has been immediately before the appointed day in the employment of the cashew factory, shall become, on and from the date on which the cashew factory is so entrusted for management, an employee of the Federation or, as the case may be, of the institution and shall hold office or service in the cashew factory on the same terms and conditions and with the same rights as to pension, gratuity and other matters as would have been admissible to him if such cashew factory had not been transferred to, and vested in, the Government and continue to do so unless and until his employment in such cashew factory is duly terminated or until his remuneration, terms and conditions of employment are duly altered, by the Federation or the Institution, as the case may be.

(2) Notwithstanding anything contained in section 10 or in any other law for the time being in force, where a cashew factory vested under this Act in the Government has been entrusted to a workers' co-operative society under sub-section (1) of section 8 for management, only such of those persons who are workmen within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), and have been, immediately before the appointed day, in the employment of the cashew factory and who become members of the workers' co-operative society to which the management has been so entrusted shall be eligible for employment in the cashew factory.

(3) Every person who is eligible for employment under sub-section (2) in a cashew factory vested under this Act in the Government and is entrusted to a workers' co-operative society for management, shall become, on and from the date on which the cashew factory is so entrusted to the society for management or the date on which he becomes a member of such society, whichever is later, an employee of the society and shall hold office or service in the cashew factory on such remuneration, terms and conditions of employment as may be determined by the society.

(4) The Federation or a workers' co-operative society or any institution to which the management of a cashew factory vested under this Act in the Government is entrusted under sub-section (1) of section 8, may employ on mutually acceptable terms and conditions, any person who is not a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) and who has been, immediately before the appointed day, in the employment of such cashew factory and on such employment the said person shall become an employee of the Federation or the society or the institution, as the case may be.

(5) Where the management of a cashew factory vested under this Act in the Government is entrusted to the Federation or to a workers' co-operative society or to any other institution for management under sub-section (1) of section 8, any person whose service becomes terminated or who becomes an employee of the Federation or the society or the institution by reason of the provisions of this section, is entitled to any payment by way of gratuity or retirement benefits or for any leave not availed of, or any other benefits, prior to the appointed day, such person may enforce his claim against the occupier of the cashew factory immediately before the appointed day but not against the Government or the Federation or the society or the institution.

(6) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947), or in any other law for the time being in force, any person whose service becomes terminated or whose terms and conditions of employment have been altered in pursuance of the provisions of this section, shall not be entitled to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.".

6. *Amendment of section 11.*—In section 11 of the principal Act,

(a) in sub-section (1), for the portion beginning from "to the Government or the Corporation" and ending with "as the case may be", the following shall be substituted, namely:—

"to the Government or the Corporation or the Federation or a workers' co-operative society or an institution, shall, out of the moneys standing, on the appointed day, to the credit of such provident fund, stand transferred to, and vest in, the Government or the Corporation or the Federation or the workers' co-operative society or the institution, as the case may be.";

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) The moneys which stand transferred, under sub-section (1) to the Government or the Corporation or the Federation or a workers' co-operative society or an institution shall be dealt with by the Government, or the Corporation or the Federation or the workers' co-operative society or the institution, as the case may be, in such manner as may be prescribed.".

7. *Amendment of section 12.*—In section 12 of the principal Act, after the words "or the Corporation", the words "or the Federation or a workers' co-operative society or an institution" shall be inserted.

8. *Amendment of section 15.*—In section 15 of the principal Act,

(a) in sub-section (1), for the words "the Government or the Corporation", in both the places where they occur, the words "the Government or the Corporation or the Federation or a workers' co-operative society or an institution" shall be substituted;

(b) in sub-section (2), for the words "the Government or the Corporation", in both the places where they occur, the words, "the Government or the Corporation or the Federation or a workers' co-operative society or an institution" shall be substituted.

9. *Repeal and saving.*—(1) The Kerala Cashew Factories (Acquisition) Amendment Ordinance, 1985 (10 of 1985), is hereby repealed.

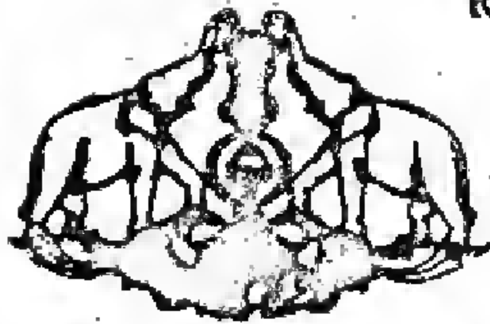
(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Ordinance.

P. RAMACHANDRAN,
GOVERNOR.

Reg. No, KL/TV(N)/12

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KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXX] Trivandrum, Monday, 12th August 1985 / 21st Sravana 1907 [No. 674

GOVERNMENT OF KERALA

Law (Legislation-C) Department

NOTIFICATION

No. 10540|Leg. C2|84|Law. *Dated, Trivandrum, 12th August, 1985|*
21st Sravana, 1907.

The following Ordinance promulgated by the Governor on the 12th day of August, 1985, is hereby published for general information.

By order of the Governor,

K. SREEDHARAN,
Law Secretary.

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1985.

33|3435|MC.

THE KERALA WATER AND WASTE WATER ORDINANCE, 1985

Arrangement of sections

PREAMBLE

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TRANSITORY PROVISIONS AND REPEAL

ORDINANCE No. 66 OF 1985

THE KERALA WATER AND WASTE WATER ORDINANCE, 1985

Promulgated by the Governor of Kerala in the Thirty-sixth Year of the Republic of India.

AN

ORDINANCE

to provide for the establishment of an autonomous authority for the development and regulation of water supply and waste water collection and disposal in the State of Kerala and for matters connected therewith.

Preamble.—WHEREAS the Kerala Water and Waste Water Ordinance, 1984 (14 of 1984), was promulgated by the Governor of Kerala on the 1st day of February, 1984;

AND WHEREAS a Bill to replace the said Ordinance by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 2nd day of March, 1984 and ended on the 27th day of March, 1984;

AND WHEREAS in order to keep alive the provisions of the said Ordinance, the Kerala Water and Waste Water Ordinance, 1984 (39 of 1984), was promulgated by the Governor of Kerala on the 13th day of April, 1984;

AND WHEREAS a Bill to replace Ordinance 39 of 1984 by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 18th day of June, 1984 and ended on the 27th day of July, 1984;

AND WHEREAS in order to keep alive the provisions of Ordinance 39 of 1984, the Kerala Water and Waste Water Ordinance, 1984 (60 of 1984), was promulgated by the Governor of Kerala on the 30th day of July, 1984;

AND WHEREAS a Bill to replace Ordinance 60 of 1984 by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 22nd day of October, 1984 and ended on the 5th day of November, 1984;

AND WHEREAS in order to keep alive the provisions of Ordinance 60 of 1984, the Kerala Water and Waste Water Ordinance, 1984 (102 of 1984), was promulgated by the Governor of Kerala on the 3rd day of December, 1984;

AND WHEREAS a Bill to replace Ordinance 102 of 1984 by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 6th day of March, 1985 and ended on the 11th day of April, 1985;

AND WHEREAS in order to keep alive provisions of Ordinance 102 of 1984, the Kerala Water and Waste Water Ordinance, 1985 (17 of 1985), was promulgated by the Governor of Kerala on the 17th day of April, 1985;

AND WHEREAS a Bill to replace Ordinance 17 of 1985 by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 1st day of July, 1985 and ended on the 31st day of July, 1985;

AND WHEREAS under sub-clause (a) of clause (2) of article 213 of the Constitution of India, Ordinance 17 of 1985 will cease to operate on the 12th day of August, 1985;

AND WHEREAS difficulties will arise if the provisions of that Ordinance are not kept alive;

AND WHEREAS the Legislative Assembly of the State of Kerala is not in session and the Governor of Kerala is satisfied that circumstances exist which render it necessary for him to take immediate action;

AND WHEREAS instructions from the President have been obtained in pursuance of the proviso to clause (1) of article 213 of the Constitution of India;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Kerala is pleased to promulgate the following Ordinance:—

Chapter I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Ordinance may be called the Kerala Water and Waste Water Ordinance, 1985.

(2) It extends to the whole of the State of Kerala.

(3) It shall be deemed to have come into force on the 1st day of March, 1984.

2. *Definitions.*—In this Ordinance, unless the context otherwise requires,—

(i) "Authority" means the Kerala Water and Waste Water Authority constituted under section 3;

(ii) "cess-pool" includes a settlement tank or other tank to receive or dispose of foul matters from any premises;

(iii) "Chairman" means the Chairman of the Authority;

(iv) "communication pipe" means any pipe or system of pipes along with all fittings thereto, by means of which water is supplied to any premises from the main and includes a connection pipe, service pipe, meter or other fittings;

(v) "connection pipe" means any water pipe from a ferrule to stop cock connecting the distribution main with the service pipe;

(vi) "consumer" means any person getting the benefit of any water supply or waste water service from the Authority;

(vii) "domestic sewage" means waste water from any residence, boarding or lodging-house, hostel, hotel, public place, office or any such establishment as is not a part of any trade or industry and arising out of personal and normal human activities such as drinking, bathing, ablution, washing and cooking;

(viii) "drain" means every part of any conduit laid through, under or above a street, way or land whether public or private by or at the expense of the owner or occupier of any premises for the carriage therefrom of any waste water to any sewer;

(ix) "ferrule" means a ferrule connecting the connection pipe with the main;

(x) "local area" means the area falling within the jurisdiction of a local body;

(xi) "local body" means a city corporation, a municipal council, a township or a panchayat;

(xii) "main" means a pipe laid by the Authority for the purpose of giving a general supply of water as distinct from a supply to an individual consumer, and includes any apparatus used in connection with such a pipe;

(xiii) "Managing Director" means the Managing Director of the Authority;

(xiv) "member" means a member of the Authority;

(xv) "occupier" in relation to any premises, includes—

(a) any person for the time being paying or liable to pay rent or any portion thereof to the owner in respect of those premises

(b) the owner who is in occupation of the premises;

(c) a tenant of the premises who is exempt from payment of rent;

(d) a licensee who is in occupation of the premises; and

(e) any person who is liable to pay damages to the owner in respect of use and occupation of the premises.

(xvi) "owner", in relation to any premises, means the person who receives the rent of that premises or who would be entitled to receive the rent thereof if the premises were let and includes,—

(a) an agent or trustee who receives such rent on account of the owner;

(b) an agent or trustee who receives the rent of, or is entrusted with the management of, any premises devoted to religious or charitable purposes;

(c) a receiver or manager appointed by any court of competent jurisdiction to have the charge of, or to exercise the rights of an owner of the said premises; and

(d) a mortgagee in possession;

(xvii) "premises" means any land or building and includes—

(a) the garden, land and outhouses, if any, appertaining to a building or part of a building; and

(b) any fittings affixed to a building or part of a building for more beneficial enjoyment thereof;

(xviii) "prescribed" means prescribed by rules made under this Ordinance;

(xix) "private street" means any street, road, square, court, alley, passage or riding-path which is not a "public street", but does not include a pathway made by the owner of premises on his own land to secure access to or the convenient use of such premises;

(xx) "public street" means any street, road, square, court, alley, passage or riding-path over which the public have a right of way, whether a thoroughfare or not, and includes—

(a) the roadway over any public bridge or causeway;

(b) the foot-way attached to any such street, public bridge or causeway; and

(c) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, veranda, or other structure, which lies on either side of the roadway upto the boundaries of the adjacent property, whether that property is private property or property belonging to the Government;

(xxi) "regulations" means regulations made by the Authority under this Ordinance;

(xxii) "rules" means rules made under this Ordinance;

(xxiii) "service pipe" means any pipe other than the connection pipe beyond the stop cock by means of which the water is supplied to any premises;

(xxiv) "sewage" means night soil and other contents of a water close, latrines, privies, urinals, cess-pools or drains and polluted water from sinks, bath-rooms, stables and other like places and includes trade effluents;

(xxv) "sewer" means a closed conduit for carrying sewage, offensive matter, polluted water, waste-water or sub soil water;

(xxvi) "sewerage" means a system of collection of waste water from a community from its houses, institutions, industry and public places, the pumping, treatment and disposal of such waste water, its effluent, sludge, gas and other end products;

(xxvii) "State" means the State of Kerala;

(xxviii) "stop cock" means a stop cock fitted at the end of a connection-pipe away from the main for the purpose of switching off and regulating the water supply to any premises;

(xxix) "street" means a private street or a public street;

(xxx) "trade effluent" means any liquid either with or without particles of matter in suspension therein, which is wholly or in part produced or discharged in the course of any trade or industry including agriculture and horticulture, but does not include domestic sewerage;

(xxxi) "waste water" shall include domestic sewage, spent water and all waste water let out from any industries or by any other source;

(xxxii) "water connection" includes,

(a) a tank, cistern, hydrant, stand pipe, meter or tap, situated on any private property and connected with a main or other pipe belonging to the Authority;

(b) the water pipe connecting such a tank, cistern, hydrant, stand-pipe, meter or tap with such main or pipe;

(xxxiii) "water supply" means a system of providing water to a community for meeting its requirement for drinking and other domestic uses, industry, recreation and various public uses, but does not include providing water for irrigation purposes;

(xxxiv) "water works" includes water channel (including stream, lake, spring, river or canal, well pump, galleries, reservoir, cistern tank), duct, whether covered or open, treatment units, sluice supply main, culvert, engine, water-truck, hydrants, stand-pipe, conduit and machinery, land, building or other things for supplying or used for supplying water or for protecting sources of water supply or for treatment of water.

CHAPTER II

ESTABLISHMENT, CONDUCT OF BUSINESS, FUNCTIONS AND POWERS OF THE AUTHORITY

3. *Establishment of Kerala Water and Waste Water Authority.*—(1) The Government shall, by notification in the Gazette and with effect from such date as may be specified therein, establish an autonomous authority to be called the Kerala Water and Waste Water Authority.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall by the said name sue and be sued.

(3) The Authority shall for all purposes be deemed to be a local authority.

(4) The Authority shall have its head office at Trivandrum and may have offices at such other places as it may consider necessary.

4. *Constitution of the Authority.*—The Authority shall consist of the following members, namely:—

(a) the Minister in charge of Public Health Engineering Department, who shall be the Chairman;

(b) a Managing Director, who shall be a qualified Public Health Engineer with experience in the management and administration of water and waste water systems, appointed by the Government;

(c) the Secretary to Government in charge of Public Health Engineering Department, *ex-officio*;

(d) the Finance Secretary to Government, *ex-officio*;

(e) the Secretary to Government in charge of Local Administration Department, *ex-officio*;

(f) a member representing the local bodies in the State, appointed by the Government; and

(g) a member belonging to a Scheduled Caste or Scheduled Tribe, appointed by the Government.

5. *Disqualification for being a member.*—A person shall be disqualified for being chosen as, and for being a member if he—

(a) has been convicted of an offence involving moral turpitude;

(b) is an undischarged insolvent;

(c) is of unsound mind and stands so declared by a competent court;

(d) holds, except as provided in sections 6 and 7, any office of profit under the Authority;

(e) has directly or indirectly by himself or by any partner, employer or employee, any share or interest, whether pecuniary or of any other nature, in any contract or employment with, by or on behalf of the Authority.

6. *Term of office of Managing Director and non-official members.*—(1) The Managing Director and a member referred to in clause (f) or clause (g) of section 4 shall hold office for a period of three years unless their term is terminated earlier by the Government by notification in the Gazette, and shall be eligible for reappointment.

(2) The Managing Director and the members referred to in sub-section (1) shall hold office on such terms and conditions as the Government may, by order, specify.

(3) The members (including the Managing Director) shall be entitled to such travelling and daily allowances as may be prescribed.

(4) The Managing Director or the members referred to in sub-section (1) may resign his office by writing under his signature addressed to the Chairman and on such resignation being accepted he shall be deemed to have vacated his office.

7. *Remuneration of Managing Director and filling up of temporary vacancies.*—(1) The Managing Director shall be paid from the Authority's fund such remuneration as may be fixed by the Government from time to time.

(2) If any member is by infirmity or otherwise rendered temporarily incapable of carrying out his duties or is absent on leave otherwise in circumstances not involving the vacation of his appointment, the Government may appoint another person to officiate for him and to carry out his functions under this Ordinance.

8. *Appointment of officers and staff.*—(1) Subject to the provisions of sub-section (2), the Authority may appoint for the purpose of enabling it to carry out its powers, duties and functions under this Ordinance, a Secretary and such other officers and staff as may be required against posts duly sanctioned by it with the previous approval of the Government.

(2) The Authority may, with the previous approval of the Government, appoint a servant of the Central Government or the State Government as an employee of the Authority on such terms and conditions as it thinks fit.

(3) Except as provided in this section, the appointment and conditions of service of the officers and employees of the Authority shall be governed by rules made by the Government from time to time.

9. *Supervision and control of employees.*—Subject to the superintendence of the Authority, the Managing Director shall have the general control and direction over all the employees of the Authority.

10. *Authentication of orders and other instruments of the Authority.*—(1) All proceedings of the Authority shall be authenticated by the signature of the Chairman and all orders and other instruments of the Authority shall be authenticated by the signature of such officer of the Authority as may be authorised in this behalf by regulations.

(2) The Authority may invite any person to attend a meeting of the Authority for the purpose of assisting or advising it on any matter and the persons so invited may take part in the proceedings of the Authority, but shall have no right to vote.

11. *Delegation of powers.*—Subject to the provisions of this Ordinance, the Authority may, by general or special order, delegate either unconditionally or subject to such conditions as may be specified in the order. to any committee appointed by it or to the Chairman, or the Managing Director

or any other officer of the Authority such of its powers and duties under this Ordinance as it deems fit, not being its powers and duties under sections 25, 28, 29 and 66.

12. *Disqualification for participation in the proceedings of the Authority on account of interest.*—(1) The Chairman or any other member of the Authority or of a committee appointed by the Authority who has acted professionally, in relation to any matter on behalf of any person having any such share or interest as aforesaid, shall not vote or take part in any proceeding (including any discussion on any resolution or question) of the Authority or of any committee thereof relating to such matter.

(2) If any member of the Authority or of a committee appointed by the Authority has directly or indirectly any interest in any area in which it is proposed to acquire land for any of the purposes of this Ordinance he shall not take part in any meeting of the Authority or any committee thereof in which any matter relating to such land is considered.

13. *Acts not to be invalidated by irregularity, vacancy, etc.*—No act done or proceeding taken under this Ordinance by the Authority or a committee appointed by the Authority shall be invalidated merely on the ground of—

(a) any vacancy in, or defect in the constitution of the Authority or any committee thereof, or;

(b) any defect or irregularity in the appointment of a person acting as a member thereof, or;

(c) any defect or irregularity in such act or proceeding, not affecting the substance.

14. *Functions of the Authority.*—The Authority shall perform all or any of the following functions, namely:—

(i) preparation, execution, promotion, operation, maintenance and financing of the schemes for the supply of water and for the disposal of waste water;

(ii) rendering all necessary services in regard to water supply and collection and disposal of waste water to the Government and on request to private institutions or individuals;

(iii) preparation of State plans for water supply and collection and disposal of waste water on the directions of the Government;

(iv) fixation and revision of tariffs, taxes and charges of water supply and maintenance service in the areas covered by the water supply and waste water systems of the Authority;

(v) establishment of State standards for water supply and waste water services;

(vi) all functions, not stated herein which were being performed by the Public Health Engineering Department of the Government before the commencement of this Ordinance;

(vii) assessment of the requirements for manpower and training in relation to water supply and sewerage services in the State;

(viii) carrying out applied research for the efficient discharge of the functions of the Authority;

(ix) making provision for the supply of wholesome water and efficient sewerage services to the people in the State;

(x) taking such other measures as may be necessary to ensure water supply in times of emergency; and

(xi) such other functions as may be entrusted to the Authority by the Government by notification in the Gazette.

15. *Powers of the Authority.*—(1) The Authority shall, subject to the provisions of this Ordinance, have power to do anything which may be necessary or expedient for carrying out its functions under this Ordinance.

(2) Without prejudice to the generality of the foregoing provisions, such power shall include the power—

(i) to obtain such periodic or specific information from any local body as it may deem necessary;

(ii) to prepare and carry out schemes for water supply and sewerage and to exercise all powers and perform all functions relating thereto:

Provided that the power of sanctioning schemes costing more than twenty-five lakhs of rupees shall be exercised only with the previous approval of the Government;

(iii) to lay down the schedule of fees for all services rendered by the Authority to the Government, local bodies, institutions or individuals, to fix or amend tariffs and charges for water supply and sewerage services and collect all such fees and charges for these services as may be prescribed;

(iv) to enter into contract or agreement with any person, firm or institution as the Authority may deem necessary, for performing its functions under this Ordinance;

Provided that any contract or agreement involving more than twenty-five lakhs of rupees shall be entered into by the Authority only with the previous approval of the Government;

(v) to adopt its own budget annually subject to the previous approval of the Government;

(vi) to abstract water from any natural source with the permission of the Government and dispose of waste water;

(vii) to borrow money, issue debentures, to obtain subventions and grants, to incur expenditure and manage its own funds;

(viii) to grant loans and advances to such persons or authorities as the Authority may deem necessary for performing the functions under this Ordinance;

(ix) to acquire, possess and hold lands and other property and to carry any water or sewerage works through, across, over or under any highway, road, street or place and, after reasonable notice in writing to the owner or occupier, into, through, over or under any building or land.

CHAPTER III

VESTING OF PROPERTIES, ASSETS, LIABILITIES AND OBLIGATIONS AND TRANSFER OF EMPLOYEES

16. *Vesting of property in Authority etc.*—(1) As from the date of establishment of the Authority, (hereinafter in this Chapter referred to as "the appointed day"),—

(a) (i) all properties and assets (including water works, buildings, laboratories, stores, vehicles, furniture and other furnishing), all the existing water supply and sewerage services, sewerage works and sewage farms including, as the case may be, all plants, machineries, water works, pumping stations, filter beds, water mains and public sewers in, along, over or under any public street and all buildings, lands and other works, materials, stores and things appertaining thereto; and

(ii) so much of the subsoil appertaining to the said water mains and sewers as may be necessary for the purpose of enlarging, deepening or otherwise repairing or maintaining any such water mains and sewers or any pipes and other appliances and fittings connected with such water supply and sewerage services and sewage works and sewage farms which immediately before the appointed day were vested in the Government for the purposes of the Public Health Engineering Department,

shall vest in and stand transferred to the Authority;

(b) all the rights, liabilities and obligations of the Government whether arising out of any contract or otherwise pertaining to the said department including the right to recover arrears of water tax and sewage tax and of any cost or fees relating to water supply and sewerage services shall be the rights, liabilities and obligations of the Authority; and

(c) all the assets, rights, liabilities and obligations of the Kerala State Rural Development Board constituted under the Kerala State Rural Development Board Act, 1971 (15 of 1971), in so far as they pertain to execution of water supply and sewerage schemes in the panchayat areas including the right to recover arrears of annual instalments from panchayats towards expenditure on water supply and sewerage schemes under section 13 of the said Act,

shall be the assets, rights, liabilities and obligations of the Authority.

(2) The properties, assets, rights, liabilities and obligations referred to in sub-section (1) shall be valued in such manner as the Government may determine.

(3) All suits and other legal proceedings instituted or defended or which might but for the vesting and transfer under sub-section (1) have been instituted or defended by or against the Government may be continued or instituted or defended by or against the Authority.

17. *Decision of Government on the vesting of property to be final.*—Where any doubt or dispute arises as to whether any property or asset has vested in the Authority under section 16 or any rights, liabilities or obligations have become the rights, liabilities and obligations of the Authority under that section, such doubt or dispute shall be referred to the Government whose decision thereon shall be final.

18. *Vesting of existing water supply and sewerage services under local bodies.*—(1) As from the date following the expiry of a period of three years from the appointed day or such further period as may be specified by the Government in this behalf by notification in the Gazette,—

(a) all the water supply and sewerage services, sewerage works and sewage farms including all the plants, machineries, pumping stations, distribution lines and public sewers in, along, over or any public street and all buildings, lands and other works, materials, stores and things appertaining thereto;

(b) so much of the subsoil appertaining to the said distribution lines and sewers as may be necessary for the purpose of enlarging, deepening or otherwise repairing or maintaining any such distribution lines and sewers or any pipes and other appliances and fittings connected with such water supply and sewerage services and sewerage works; and

(c) all rights, liabilities and obligations including the right to recover arrears of water charges, meter hire and of any cost or fees relating to water supply and sewerage services,

which immediately before the above mentioned date vested in any local body shall vest in and stand transferred to the Authority.

(2) The properties, assets, rights, liabilities and obligations referred to in sub-section (1) shall be valued in such manner as the Government may determine.

(3) Where any doubt or dispute arises as to whether any property or asset has vested in the Authority or any right, liability or obligation has become the right, liability or obligation of the Authority under this section, such doubt or dispute shall be referred to the Government whose decision thereon shall be final and binding on the Authority and the local body concerned.

19. *Transfer of employees to the Authority.*—(1) Save as otherwise provided in this section, every person who was employed in the Public Health Engineering Department of the Government shall, on and from the appointed day become an employee of the Authority and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions, and with the same rights and privileges as to pension, gratuity and other matters as he would have held the same on the appointed day if this Ordinance had not come into force and shall continue to do so until his employment in the Authority is terminated or until his remuneration or other terms and conditions of service are revised or altered by the Authority under or in pursuance of any law or in accordance with any provision which for the time being governs his service:

Provided that nothing contained in this sub-section shall apply to an employee in the cadres of the Administrative Officers, Financial Assistants, Divisional Accountants, Typists and Stenographers, who, by notice in writing given to the Government and the Authority within such time as the Government may, by general or special order, specify, intimates his intention of not becoming an employee of the Authority:

Provided further that an employee referred to in the preceding proviso shall continue to be an employee under the Government and shall be provided elsewhere in any post or other service under the Government.

(2) The sums standing in the credit of the employees referred to in sub-section (1) in any pension, provident fund, gratuity or other like fund constituted for them shall be transferred by the Government to the Authority along with any accumulated interest due till the appointed day and with the accounts relating to such funds and the Authority shall, to the exclusion of the Government, be liable for payment of pension, provident fund, gratuity or other like sums as may be payable to such employees at the appropriate time in accordance with the conditions of their service.

(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947), or in any other law for the time being in force, the transfer of service of an employee to the Authority under sub-section (1) shall not entitle any such employee to any compensation under

that Act or such other law and no such claim shall be entertained by any court, tribunal or other authority.

(4) Every permanent or temporary employee of the Public Health Engineering Department of the State Government under sub-section (1) shall on and from the appointed day, be a permanent or temporary employee, as the case may be, of the Authority, against a permanent or temporary post which shall stand created in the establishment of the Authority with effect on and from the appointed day.

(5) An employee referred to in the first proviso to sub-section (1) shall be deemed to have continued in the service of the Government between the appointed day and the date of relief from the establishment of the Authority after receipt of his notice in writing addressed to the Authority referred to in that proviso and the Authority shall be entitled to reimbursement from the Government of the remuneration paid by it to such employee for such period.

(6) Nothing in any rule, regulation or order applicable to Government servants in relation to retrenchment or abolition of posts shall apply to any employee referred to in sub-section (1).

(7) Notwithstanding anything contained in the foregoing sub-sections, the authority shall be competent to take such disciplinary or other action as it thinks fit or to continue any such action already initiated against or in respect of any employee who becomes an employee of the Authority under sub-section (1) in respect of any act or omission or conduct or record of such employee while he was in the service of the Government.

20. *Transfer of employees of Local Bodies to the Authority.*—(1) Save as otherwise provided in this section, an employee who was employed exclusively in connection with water supply or sewerage service or sewerage works under a local body whose properties, assets, and water supply and sewerage services have been transferred to the Authority under section 18 shall, on and from the date of transfer of such property and assets to the Authority, become an employee of the Authority.

(2) Notwithstanding anything contained in sub-section (1) but subject to any express agreement to the contrary, any employee referred to therein other than a workman as defined in the Industrial Disputes Act, 1947 (Central Act 14 of 1947), who becomes an employee of the Authority shall be liable for transfer from any establishment or undertaking in which he was employed immediately before the said date to any other establishment or undertaking belonging to the Authority at the same remuneration and on the same terms and conditions as were applicable to them immediately before such transfer.

(3) If any question arises as to whether any person was exclusively employed in connection with the water supply or sewerage services or sewerage

works under a local body immediately before the said date, such question shall be decided by the Government.

(4) The sums standing to the credit of the employees referred to in sub-section (1) in any pension, provident fund, gratuity or other like funds constituted for them shall be transferred by the local body concerned to the Authority along with any accumulated interest due till the said date and with the accounts relating to the said fund and the Authority shall, to the exclusion of the local body, be liable for payment of pension, provident fund, gratuity or other like sums as may be payable to such employees at the appropriate time in accordance with the conditions of their service.

(5) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947), or in any other law for the time being in force, the transfer of services of an employee to the Authority under sub-section (1) shall not entitle any such employee to any compensation under that Act or such other law and no such claim shall be entertained by any court, tribunal or authority.

(6) Every permanent or temporary employee of a local body becoming an employee of the Authority under sub-section (1) shall, on and from the said date be a permanent or temporary employee, as the case may be, of the Authority, against a permanent or temporary post which shall stand created in the establishment of the Authority with effect from the said date.

(7) Nothing in any rule, regulations or order applicable to employees of the local bodies in relation to retrenchment or abolition of posts shall apply to any employee referred to in sub-section (1).

(8) Notwithstanding anything contained in the foregoing sub-sections, the Authority shall be competent to take such disciplinary or other action as it thinks fit or to continue any such action already initiated against or in respect of any employee who becomes an employee of the Authority under sub-section (1) in respect of any act or omission or conduct or record of such employee while he was in the service of the local body.

CHAPTER IV

PROPERTY, CONTRACT, FINANCE, ACCOUNTS AND AUDIT

21. *Execution and registration of contracts etc.*—Every contract for assurance of property on behalf of the Authority shall be in writing and executed by such officer and in such manner as may be provided by the regulations.

22. *Funds of Authority.*—(1) The Authority shall have its own fund to be called the "Kerala Water and Waste Water Authority Fund" which shall be deemed to be a local fund and to which shall be credited all moneys received otherwise than by way of loans by or on behalf of the Authority.

(2) The Authority shall also have another fund to be called the "Kerala Water and Waste Water Authority's Loan Fund" which shall also be deemed to be a local fund and to which shall be credited all moneys received by or on behalf of the Authority by way of loans.

(3) Without prejudice to the provisions of sub-sections (1) and (2), the Authority may, with the previous approval of the Government, constitute such other funds as may be necessary for the efficient performance of its functions under this Ordinance.

(4) All moneys specified in the foregoing provisions and forming part of the funds of the Authority shall be deposited under such detailed Heads of Account as may be prescribed—

(a) into the Public Account of the Government; or

(b) in the State Bank of India constituted under the State Bank of India Act, 1955 (Central Act 23 of 1955); or

(c) in a Subsidiary Bank as defined in section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (Central Act 38 of 1959); or

(d) in any nationalised Bank coming within the scope of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970) or the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (Central Act 40 of 1980);

and the said account shall be operated upon by such officers of the Authority as may be authorised by the Authority and in such manner as may be prescribed:

Provided that the Authority may invest any sum not required for immediate use in such securities or debentures as may be approved by the Government.

23. *General principles for the Authority's finance.*—The Authority shall not, as far as practicable and after taking credit for any grant or subventions or capital contributions or loans from the Government under section 24, carry on its operations under this Ordinance at a loss and shall so fix and adjust its rates of taxes and charges under this Ordinance as to enable it to meet as soon as feasible the cost of its operations, maintenance and debt service and where practicable to achieve an economic return on its fixed assets.

24. *Grants, subventions, etc., to the Authority.*—The Government may, after due appropriation by law of the State Legislature, from time to time make grants, subventions and capital contributions, and advance loans to the Authority for the purposes of this Ordinance on such terms and conditions as the Government may determine.

25. *Power of Authority to borrow.*—(1) Notwithstanding anything contained in any law for the time being in force under which any local body is constituted, the Authority shall with effect from the date of its establishment be the only local authority authorised to borrow any sum of money for water supply and sewerage works.

(2) Without prejudice to the provisions of sub-section (1), the Authority may, from time to time, with the previous sanction of the Government and subject to the provisions of this Ordinance and to such conditions as the Government may, by general or special order, determine, borrow any sum required for the purposes of this Ordinance whether by the issue of bonds or stock or otherwise or by making arrangements with Banks or other bodies or institutions approved by the Government in that behalf.

(3) Stocks issued by the Authority under this section shall be issued, transferred, dealt with and redeemed in such manner as the Government may, by general or special order, direct.

26. *Depreciation Reserve.*—The Authority shall create a Depreciation Reserve and make annual provision therefor in accordance with such principles as may be prescribed.

27. *Guarantee for loans.*—(1) Government may guarantee the repayment of any loan and payment of interest on all loans made or transferred to the Authority for the purposes of this Ordinance.

(2) The Government shall, so long as any such guarantee is in force, lay before the State Legislature in every year during the budget session, a statement of the guarantees, if any, given during the current financial year and up-to-date accounts of the total sums, if any, which have been paid out of the Consolidated Fund of the State by reason of any such guarantee or paid into the said Fund towards repayment of any moneys so paid out.

28. *Estimates of income and expenditure.*—(1) The Authority shall before the commencement of, and may at any time during, a financial year prepare a statement or a supplementary statement, as the case may be, of the programme of its activities during the year as well as a financial estimate in respect thereof and the same shall be submitted in such manner, in such form and by such dates as the Government may, by general or special order, direct, for the previous approval of the Government:

Provided that in the event of such previous approval not being received before the commencement of the financial year for which such financial statement has been submitted, the Authority shall be entitled to expend on all accounts upto an amount not exceeding the amount approved for the corresponding period of the previous financial year and such amount shall not include any sum spent out of grants and subventions during the said period.

(2) Every financial estimate referred to in sub-section (1) shall make provision for the due fulfilment of all the liabilities of the Authority and for the efficient administration of this Ordinance.

(3) Save where in the opinion of the Authority circumstances of extreme urgency have arisen, no sum exceeding one lakh of rupees on account of recurring expenditure or exceeding five lakhs of rupees on account of non-recurring expenditure shall be expended by the Authority in any year of account unless such sum has been included in a financial estimate submitted under sub-section (1) to the Government.

(4) Where any such sum is expended under circumstances of extreme urgency, a report thereon indicating the sources from which it is proposed to meet the expenditure shall be made as soon as practicable to the Government.

29. *Accounts and Audit.*—(1) The Authority shall cause to be maintained such books of accounts and other books in relation to its accounts and prepare an annual statement of account and balance sheet in such form and in such manner as the regulations may require.

(2) The accounts of the Authority shall be audited by such Auditor, in such manner and at such time as the Government may, by general or special order, direct and the Auditor so appointed shall have such powers of requiring the production of documents and the furnishing of information respecting such matters, and shall have such powers in respect of disallowance and surcharge as may be prescribed.

(3) The accounts of the Authority as certified by the Auditor together with the audit report thereon shall be forwarded annually to the Government who may issue such directions to the Authority as they may deem fit and the Authority shall comply with such directions.

(4) The Government shall,—

(a) cause the accounts of the Authority together with the audit report thereon received by it under sub-section (3) to be laid annually before the State Legislature; and

(b) cause the accounts of the Authority to be published in such manner as may be prescribed.

30. *Surcharge.*—(1) The Managing Director or any other member, officer or employee of the Authority shall be liable to surcharge for the loss, waste or mis-application of any money or property of the Authority if such loss, waste, or mis-application is a direct consequence of his neglect or misconduct while acting as such Managing Director or other member or officer or employee.

(2) Procedure of surcharge under sub-section (1) shall be such as may be prescribed.

(3) Any amount found due from any person as surcharge under sub-section (1) as a result of proceedings for surcharge shall be recoverable as arrears of land revenue.

(4) Nothing in sub-section (3) shall prevent the Authority from deducting any amount referred to therein from any sum payable by the Authority on account of remuneration or otherwise to such Managing Director or other member, officer or employee.

Chapter V

TAXES, FEES AND CHARGES

?1. *Payment of contribution by local bodies.*—The local bodies who are beneficiaries of the water supply, sewerage and other services rendered by the Authority shall pay to the Authority annually, such sums not exceeding the amount of water tax and drainage tax or sewerage tax, as the case may be, due to such local bodies as part of house or property tax levied by them under the Acts constituting such local bodies, in such manner and at such times as may be prescribed.

32. *Cost of water.*—(1) The Authority shall, by notification in the Gazette, fix the cost of water to be supplied by it according to volume and also the minimum cost to be charged in respect of each connection.

(2) The Authority may, in lieu of charging the cost of water according to volume, accept a fixed sum for a specified period on the basis of expected consumption of water during that period.

33. *Cost of collection and disposal of waste water.*—(1) The Authority shall, by notification in the Gazette, fix the cost of collection and disposal of waste water according to its volume (which shall be such percentage of the volume of total water supplied to the consumer as may be prescribed) and also the minimum cost to be charged in respect of such collection and disposal.

(2) The Authority may, in lieu of charging the cost of collection and disposal of waste water according to the basis referred to in sub-section (1) accept a fixed sum for a specified period on the basis of expected collection and disposal of waste water during that period.

34. *Meter rent.*—The Authority may provide water meters and charge such rent for the meter as may be provided in the regulations.

35. *Security deposit.*—The Authority may demand such sum as security from any consumer in connection with the supply of meter or for sewer connection as provided in the regulations;

Provided that the Authority shall pay interest at such rates as the Government may from time to time determine on any sum so deposited with the Authority.

36. *Fees.*—The Authority may charge such fees for connection, disconnection and re-connection of any water supply or sewer for testing or supervision or for any other service rendered or work executed or supervised as may be provided in the regulations.

37. *Recovery of taxes, fees and other sums due.*—(1) Any sum due to the Authority on account of any tax, fee, cost of water, cost of collection and disposal of waste water, meter rent, penalty, damage or surcharge under this Ordinance shall be recoverable as arrears of land revenue.

(2) Nothing in sub-section (1) shall affect the power of the Authority to cut off in accordance with the regulations the connection of water supply in the event of non-payment by the consumer of any dues referred to in that sub-section.

Chapter VI

WATER SUPPLY

38. *Definition of supply of water for domestic purposes.*—The supply of water for domestic purposes under this Ordinance means supply of water for any purpose except the following, namely:—

(a) for any commerce or trade, manufacture or business;

(b) for gardens or for purposes of irrigation;

Explanation.—In respect of premises used solely for residential purposes and having attached kitchen and domestic gardens, such domestic gardens shall not be treated as gardens for the purpose of this clause.

(c) for building purposes;

(d) for fountains, swimming bath, public bath, or tanks or for any ornamental or mechanical purposes;

(e) for animals where they are kept for sale or hire or for the sale of their produce or any preparation therefrom;

(f) for the consumption and use at restaurants, or by inmates of hotels, boarding houses, lodging-cum-boarding houses or residential clubs and for baths used by such inmates;

(g) for the consumption and use by persons resorting to theatres and cinemas;

(h) for making or watering streets;

(i) for washing vehicles where they are kept for sale or hire.

39. *Supply of water by the Authority.*—(1) The Authority shall on an application made in that behalf by the owner or occupier of any premises, grant supply of water for domestic purposes for—

(a) any premises situated within a distance of thirty metres from an existing main; or

(b) any premises situated beyond a distance of thirty metres from an existing main, if the applicant undertakes to bear the cost of extension beyond the distance of thirty metres.

(2) In cases falling under clause (b) of sub-section (1), the Authority shall bear the cost of extension only in respect of so much distance, not exceeding thirty metres as is sufficient to connect the nearest existing main with the outer limit of the premises.

(3) Notwithstanding the fact that the cost of any extension has been borne under clause (b) of sub-section (1) by the person to whom water is supplied, the property therein shall vest in the Authority.

(4) The Authority may on application made in that behalf, grant supply of water for any purpose other than domestic purposes.

(5) The supply of water for domestic or other purposes shall be subject to such terms and conditions as may be provided by regulations.

(6) Notwithstanding anything to the contrary contained in the regulations referred to in sub-section (5), the Authority may supply water to the Government or any local authority or other statutory corporation or to any educational institution on such terms as to payment and as to the period and conditions of supply as may be agreed upon.

40. *Water supply for domestic purposes not to be used for non-domestic purpose.*—No person shall, except in such circumstances or subject to such conditions as may be provided by the regulations, use or allow to be used water supplied for domestic purposes for any other purpose.

41. *Provision of fire hydrants.*—(1) The Authority may, at the request and expense of the owner or occupier of any factory or any shop or commercial establishment provide and maintain fire hydrants, together with all incidental work for the supply of water in case of fire in such factory, shop or commercial establishment and in any such case charge from such owner or occupier the cost of water supplied in connection therewith.

(2) The Authority shall provide and maintain fire hydrants together with all incidental works for the supply of water in case of fire at such other places as may be considered necessary by a joint committee of the officers of the Authority and the Fire Services Department of the Government and supply water in connection therewith.

42. *Provision of water meters.*—(1) The Authority may provide a water meter and attach the same to the service pipe in premises connected with the water works of the Authority.

(2) The expenses of installation and the rent for the use of water meter referred to in sub-section (1) shall be paid by the consumer.

(3) The provision of water meters and the transfer of connection thereto, the use, maintenance and testing of such meters and the expense of installation thereof and their rents and the furnishing of security, if any, in connection therewith shall be regulated by regulations.

43. *Licensed plumbers.*—(1) No person other than a licensed plumber of the Authority or person duly authorised by it shall execute any work in respect of a water connection not being a work of a trivial nature and no person shall permit any such work to be executed by a person other than a licensed plumber or by a person duly authorised by the Authority.

(2) When any work is executed in contravention of the provisions of sub-section (1), such work shall be liable to be dismantled at the discretion of the Authority.

44. *Prohibition of wastage of water.*—(1) No owner or occupier of any premises to which water is supplied by the Authority shall cause or suffer any water to be wasted or cause or suffer the service pipe or any tap or other fitting or work connected therewith to remain out of repair so as to cause wastage of water.

(2) Whenever the Authority has reason to believe that as a result of defect in a service pipe or tap or other fitting or work connected therewith water is being wasted, the Authority may, by written notice require the consumer to repair and make good the defect within such time as may be specified in the notice.

(3) If such repair is not carried out within the time specified, the Authority may without prejudice to any action against the consumer under any other provision of this Ordinance cause such repair to be made, and the cost of such repairs shall be realised from the consumer.

15. *Power to cut off water supply.*—(1) The Authority may cut off the water supply from any premises,—

(a) if any tax, fee, rental, cost of water or any charge or other sum due under this Ordinance, is not paid within a period of thirty days after service of a bill for the same; or

(b) if after the receipt of written notice from the Authority requiring him to refrain from so doing, the consumer continues to use the water or to permit the same to be used in contravention of the provisions of this Ordinance or any rule or regulations made thereunder; or

(c) if the consumer damages or causes to be damaged the water meter or any connection pipe or ferrule; or

(d) if the consumer refuses to admit any officer or servant of the Authority duly authorised in this behalf into the premises which he proposes to enter for the purpose of executing any work or placing or removing any apparatus or of making any examination or enquiry in connection with the water supply or prevents any such officer or servant from executing any work, or placing or removing any apparatus or making such examination or enquiry; or

(e) if the service pipe or any tap or other fitting or work connected therewith is found on examination by an officer or servant of the Authority duly authorised in that behalf to be out of repair, to such an extent as to cause wastage or contamination of water and immediate prevention thereof is necessary; or

(f) if the consumer causes or allows to be caused the service pipe or any tap or other fitting or work connected therewith to be placed, removed, repaired or otherwise interfered with, in contravention of the provisions of this Ordinance or of the rules or regulations made thereunder; or

(g) if by reason of leakage in the service pipe or any tap or other fitting or work, damage is caused to a public street and immediate prevention thereof is necessary.

(2) No action taken under or in pursuance of this section shall relieve a person from any penalty or liability which he may otherwise have incurred.

(3) The Authority may re-connect the supply of water disconnected under sub-section (1) on payment of such charges and on such terms and conditions as may be provided by regulations.

16. *Prohibition of certain acts.*—(1) No person shall—

(a) wilfully obstruct any person acting under the orders of the Authority in setting out the lines of any work or pull up or remove any

pillar, post or stay fixed in the ground for the purpose of setting out the lines of such works, or deface or destroy any works made for the same purpose; or

(b) wilfully or negligently break, injure, turn on, open, close, shut off or otherwise interfere with any lock, cock, valve, pipe, meter or other work or apparatus belonging to the Authority; or

(c) unlawfully obstruct the flow of or flush, draw off, or divert, or take water from, any water works belonging to the Authority or any water course by which any such water is supplied; or

(d) obstruct any officer or other employee of the Authority in the discharge of his duties under this Chapter or refuse or wilfully neglect to furnish him with the means necessary for the making of any entry, inspection, examination or inquiry thereunder in relation to any water works; or

(e) bathe in, at or upon any water works, or wash or throw or cause to enter therein any animal, or threw any rubbish, dirt or filth into any water works or wash or clean therein any cloth, wool or leather or the skin of any animal, or cause water of any sink, or drain or any steam engine or boiler or any polluted water to turn or be brought into any water works or do any other act whereby the water in any water works is fouled or likely to be fouled.

(2) Nothing in clause (b) of sub-section (1) shall apply to a consumer closing the stopcock fixed on the service pipe supplying water to his premises so long as he has obtained the consent of any other consumer whose supply will be affected thereby.

Chapter VII

SEWERAGE

47. *Right of owner or occupier to obtain sewer connection.*—The owner or occupier of any premises shall be entitled to empty sewage of the premises into a sewer of the Authority provided that before doing so he—

(a) obtains written permission of the Authority and pays connection fee in accordance with the regulations; and

(b) complies with such other conditions as may be provided by the regulations.

48. *Power to require owner to have sewer connection.*—Where any premises are, in the opinion of the Authority without sufficient means of effectual disposal of sewage and the sewer of the Authority is situated at a distance of not more than fifty metres from any part of the premises, the Authority may, by written notice, require the owner of the said premises to have sewer connection as provided by the regulations.

49. *Prohibition of connection with sewer.*—No person shall without the permission of the Authority make or cause to be made any connection or communication with any sewer of the Authority.

50. *Prohibition of construction of buildings, etc., over sewer.*—(1) No person shall without the permission of the Authority construct any private street, building, wall, fence or other structure on any sewer of the Authority.

(2) If any private street be constructed or any building, wall, fence or structure erected on any sewer as aforesaid without the written permission of the Authority, the Authority may remove or otherwise deal with the same as it thinks fit.

(3) The expenses incurred by the Authority in so doing shall be paid by the owner of the private street or of the building, fence, wall or other structure or as the case may be, by the person offending and shall be recoverable as an arrear of charges payable under this Ordinance.

51. *Power to affix shaft, etc., for ventilation of sewer or cess-pool.*—The Authority may for the purpose of ventilating any sewer or cess-pool, whether vested in the Authority or not, erect upon any premises or affix to the outside of any building or to any tree any shaft or pipes as may appear to it to be necessary.

52. *Power to examine and test sewer etc., believed to be defective.*—(1) Where it appears to the Authority that there are reasonable grounds for believing that a private sewer or cess-pool is in such condition as to be prejudicial to public health or to be a public nuisance or that a private sewer communicating directly or indirectly with a sewer of the Authority is so defective as to admit sub-soil water or grit or other material, it may examine its condition and for that purpose may apply any test, not being a test by water under pressure and if it deems necessary, open the ground.

(2) If on examination, the sewer or cess-pool is found to be in proper condition, the Authority shall, as soon as possible, re-instate any ground which has been opened by it.

(3) If, the sewer or cess-pool so examined is found to be defective, the Authority may forthwith stop its functioning or disconnect it from the sewer of the Authority, or require the owner or occupier to take remedial action as directed and within such time as may be specified by the Authority and in any such event the Authority may recover the cost incurred by it from the owner or occupier, as the case may be.

CHAPTER VIII

GENERAL PROVISIONS

53. *Power of entry, survey, inspection, etc.*—(1) Any officer of the Authority authorised by it in that behalf may with or without assistance of workmen enter into or upon any premises in order—

(a) to make any inspection, survey, measurement or enquiry;

(b) to take level;

(c) to dig or bore into the sub-soil;

(d) to set out boundaries and intended lines of work;

(e) to mark such levels, boundaries and lines by placing marks and cutting trenches; or

(f) to do any other thing necessary for the purpose of this Ordinance or any rule or regulation made thereunder:

Provided that—

(i) no such entry into a building shall be made between sunset and sunrise;

(ii) no dwelling house or place shall be so entered except with the consent of the occupier thereof or without giving the occupier at least twenty-four hours' notice of the intention to make such entry;

(iii) reasonable opportunity and facility shall be allowed to the women occupying any part of a dwelling house to withdraw; and

(iv) due regard shall, so far as feasible, be paid to the social and religious customs and usages of the occupants of the premises entered into.

(2) Whenever any officer of the Authority authorised under sub-section (1) enters into or upon any premises in pursuance of that sub-section, he shall, at the time of such entry pay or tender payment for the damage, if any, to be caused by any act as aforesaid and in case of dispute as to the sufficiency of the amount of compensation, such dispute shall be referred to the Chairman whose decision thereon shall be final.

(3) When any person is entitled to enter into or open any premises in exercise of the powers under sub-section (1) he may also enter in similar manner into or upon any adjoining premises for any work authorised by or under this Ordinance, or for the purpose of depositing therein any soil stone or other materials or for obtaining access to such work or for any other purposes connected with the execution of the same.

(4) It shall be lawful for any officer authorised in this behalf by the Authority to make any entry into any place to open or cause to be opened any door, gate or other barrier,—

(a) if he considers the opening thereof necessary for the purpose of such entry; and

(b) if the owner or occupier is absent, or being present refuses to open such door, gate or barrier.

(5) Before making any entry into any such place or opening or causing to be opened any such door, gate or other barrier under sub-section (4), the person authorised in this behalf shall call upon two or more persons of the locality in which the place to be entered into is situated to witness the entry or opening and may issue an order in writing to them or any of them so to do.

(6) The officer so authorised shall in exercise of any power conferred by sub-section (4) do as little damage as may be possible and compensation for such damage shall be payable by the Authority to the owner or occupier of such premises or to both and in the case of any dispute as to the sufficiency of the amount of compensation, the dispute shall be referred to the Chairman, whose decision thereon shall be final.

54. *Power to disinfect tanks, pools, wells.*—(1) Any officer authorised by the Authority in that behalf may have any tank, pool or well cleaned or disinfected after notice to the owner or occupier, if any, when it appears that such cleaning or disinfection is necessary to prevent or check the spread of any dangerous disease.

(2) The cost of cleaning or disinfection referred to in sub-section (1) shall be recoverable from the owner or occupier of such tanks, pool or well.

55. *Directions by the Government.*—(1) In the discharge of its functions, the Authority shall be guided by such directions on questions of policy as may be given to it by the Government.

(2) If any question arises as to whether any matter is or is not a matter in respect of which the Government may issue a direction under sub-section (1), the decision of the Government thereon shall be final.

56. *Annual reports, statistics and returns.*—The Authority shall, after the end of each financial year, prepare and submit to the Government before such date and in such form as the Government may direct a report giving an account of its activities during the previous financial year and the report shall also give an account of the activities, if any, which are likely

to be undertaken by the Authority in the next financial year and the Government shall cause every such report to be laid before the State Legislature as soon as possible after it is received by the Government.

(2) The Authority shall furnish to the Government at such times and in such form and manner as the Government may direct such statistics and returns and such particulars in regard to any proposed or existing schemes or activities of the Authority or any other matter under the control of the Authority as the Government may, from time to time, require.

57. *Duty of local bodies to assist.*—(1) All local bodies shall render such help and assistance and furnish such information to the Authority and shall make available for inspection and examination such records, maps, plans and other documents as it may require to discharge its functions under this Ordinance.

(2) Without prejudice to the other provisions of this Ordinance and notwithstanding anything contained in any other law for the time being in force under which any local body is constituted, the Government may give to any local body such directions as in its opinion may be necessary or expedient for enabling the Authority to perform its functions under this Ordinance and thereupon it shall be the duty of the local body to comply with such directions.

58. *Protection of acts done in good faith.*—No suit, prosecution or other legal proceedings shall lie against the Government, the Authority or the Chairman, the Managing Director or other member of the Authority or any officer or servant of the Government or of the Authority for anything which is in good faith done or purported or intended to be done in pursuance of this Ordinance or any rule or regulation made thereunder.

59. *Members, officers and servants of the Authority to be public servants.*—The Chairman, Managing Director, members, officers and servants of the Authority shall be deemed when acting or purporting to act in pursuance of the provisions of this Ordinance or any rule or regulation made thereunder to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860) and the Prevention of Corruption Act, 1947 (Central Act 2 of 1947).

CHAPTER IX

PENALTIES AND PROCEDURE

60. *General penalty.*—Whoever, in any case in which a penalty is not expressly provided by this Ordinance or any rule or regulations made thereunder, contravenes the provisions of this Ordinance or of any rule

or regulation made thereunder or fails to comply with any notice, order or requisition issued under this Ordinance or any rule or regulation made thereunder shall be punishable with fine which may extend to one thousand rupees and in the case of a continuing failure or contravention, with an additional fine which may extend to twenty-five rupees for every day on which such contravention or failure continues after the first conviction.

61. *Offences by companies.*—(1) If the person committing any offence under this Ordinance is a company, the company as well as every person in charge of and responsible to the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all the diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section—

(a) 'company' means any body corporate and includes a firm or other association of individuals; and

(b) 'director', in relation to a firm, means partner in the firm.

62. *Power to arrest person refusing to give his name and address.*—(1) Where any person in the presence of any officer of the Authority authorised by it by general or special order in that behalf has committed or has been accused of committing or who is reasonably suspected by such officer of committing any offence punishable under this Ordinance refuses or fails on demand by such officer to give his name and address or gives a name or address which such officer has reason to believe to be false he may be arrested by such officer without a warrant, in order that his name or address or both may be ascertained.

(2) The provisions of sub-sections (2) and (3) of section 42 and of sections 43, 48, 56, 57, 58 and 59 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall *mutatis mutandis* apply in relation to any arrest made under sub-section (1) as they apply to an arrest made under sub-section (1) of section 42 thereof.

63. *Composition of offences.*—(1) The Managing Director or any other officer of the Authority authorised by it by general or special order in that behalf may either before or after institution of the proceedings, compound any offence punishable under this Ordinance on such terms including payment of such composition fee as he may think fit.

(2) Where an offence has been compounded, the offender, if in custody shall be discharged and no further proceedings shall be taken against him in respect of the offence compounded.

64. *Duties of police officers and employees of local bodies.*—It shall be the duty of all police officers and of employees of the local body within whose local area any offence punishable under this Ordinance is committed or attempted to be committed to give immediate information to the Authority or to any officer of the Authority authorised in that behalf, of the commission of, or of the attempt to commit such offence, as the case may be and to assist the officers of the Authority in the exercise of their authority under this Ordinance.

Chapter X

RULES, REGULATIONS AND BYE-LAWS

65. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salaries and allowances and other conditions of service of officers and employees of the Authority other than such officers and employees employed on contract basis;

(b) the manner of operation of funds by the Authority under sub section (4), of section 22;

(c) the manner of making provision for Depreciation Reserve and for its utilisation;

(d) the powers of the Auditor under sub-section (2) of section 29,

(e) the manner in which the accounts of the Authority shall be published;

(f) the procedure in respect of surcharge under section 30 including the provision of appeal, if any, in respect thereof;

(g) the extent of contributions and manner of making such contributions by local bodies under section 31;

(h) any other matter which is to be or may be prescribed.

(3) Every rule made under this Ordinance shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

66 *Regulations.*—(1) The Authority may, with the previous approval of the Government make regulations not inconsistent with this Ordinance and the rules made thereunder, for the administration of the affairs of the Authority.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the summoning and holding of meetings of the Authority, the time and place where such meetings are to be held, the conduct of business at such meetings and the number of persons necessary to form a quorum thereat;

(b) the powers and duties of the employees of the Authority;

(c) the management of property of the Authority;

(d) the execution of contracts and assurance of property on behalf of the Authority;

(e) the limits upto which the Managing Director shall be competent to incur recurring or non-recurring expenditure in any financial year without such expenditure being included in the statement under sub-section (1) of section 28;

(f) the maintenance of accounts and the preparation of annual statement of accounts and balance sheet by the Authority;

(g) the procedure for carrying out the functions of the Authority;

(h) the terms and conditions for supply of water for domestic or other purposes;

(i) the installation of meters or transfer of their connection and their use, maintenance, testing, disconnection and reconnection, the fees, the rent and other charges in respect thereof including the furnishing of security by the consumer and matters connected therewith;

(j) the fee to be paid for connection with a sewer of the Authority and other terms and conditions for such connections;

(k) any other matter for which provision is to be or may be made in regulations.

Chapter XI

TRANSITORY PROVISIONS AND REPEAL

67. *Transitory provisions.*—(1) Any bye-laws by whatever name called made by the local bodies in relation to the provision of water supply and sewerage services under the Acts constituting such local bodies before the date of constitution of the Authority and in force immediately before the said date shall continue in force to the extent they are not inconsistent with the provisions of this Ordinance, until such time as regulations are framed by the Authority under section 66.

(2) Any water charge, fee or other item of receipt by whatever name called levied by a local body or by the officers of the Public Health Engineering Department before the date of constitution of the Authority and any notification, notice, order or direction in relation to such levy or to the provision of water supply and sewerage services issued immediately before the said date including any assessment of such levy or order for exemption or connection, disconnection or re-connection made or granted or any penalty imposed in respect of the owner or occupier of any premises or any licence issued to a plumber or any order made in connection therewith under any provision of law applicable to the local body having jurisdiction over such area and in force immediately before the said date shall continue in force until other provision or order is made or other proceedings or action taken under this Ordinance by the Authority for levy or assessment or for grant of such licence or connection or provision of such services and any reference in such notification, notice, order, direction, bye-laws or licence to the local body shall be construed as a reference to the Authority and in particular, proceeds of such charges or levy or other items of receipt shall go into the Fund of the Authority:

Provided that in respect of local bodies, this section shall have effect from the date referred to in sub-section (1) of section 18.

68. *Exclusion of powers of local bodies under certain enactments.*—Except as provided in section 67, on and from the day on which the Authority is constituted, and in respect of local bodies, on and from the date referred to in sub-section (1) of section 18,—

(a) any city constituted under the Kerala Municipal Corporations Act, 1961 (30 of 1961);

(b) any municipality constituted under the Kerala Municipalities Act, 1960 (14 of 1961);

(c) Guruvayur Township constituted under the Guruvayur Township Act, 1961 (43 of 1961);

(d) any panchayat constituted under the Kerala Panchayats Act, 1960 (32 of 1960)

shall have the powers, duties and functions under the said enactments as if the powers, duties and functions assigned by this Ordinance to the Authority including the power to hold any property for purposes of the said duties and functions were excluded from the powers, duties and functions of the corporation, the municipal council, the township committee or the panchayat, as the case may be.

69. *Amendment of Act 15 of 1971.*—With effect from the date on which this Ordinance comes into force either in part or in full, the Kerala State Rural Development Board Act, 1971 (15 of 1971), shall have effect subject to the following amendments, namely:—

(i) in section 7, in sub-section (1), the brackets, letters and words "(a) water supply schemes" and "(b) sewerage schemes" shall be omitted; and

(ii) in section 8, in the Explanation, the words "the Public Health Engineering Department shall be the Engineering Department of the Government in respect of water supply and sewerage schemes and" shall be omitted.

70. *Removal of difficulties.*—(1) The Government may, for the purpose of removing any difficulty, particularly in relation to the transition form the provisions of the enactments referred to in section 68 to the provisions of this Ordinance by order, direct that the said enactments shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission not affecting the substance, as it may deem to be necessary or expedient.

(2) Every order made under sub-section (1) shall be laid before the State Legislature.

71. *Repeal and saving.*—(1) The Kerala Water and Waste Water Ordinance, 1985 (17 of 1985), is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance shall be deemed to have been done or taken under this Ordinance.

P. RAMACHANDRAN,

GOVERNOR.

Reg. No. KL/TV(N)/12



KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXX] Trivandrum, Monday, 12th August 1985 / 21st Sravana 1907 (Saka) [No. 667

ERRATUM NOTIFICATION

No. GS3-492/85. *Dated, Trivandrum, 8th August 1985.*

The following corrections may be made to Notification No. GS3-492/85 dated 3rd June, 1985 issued from the Governor's Secretariat.

The name of Shri Jose T. Manjooran, Principal, Law College, Ernakulam, included as Sl. No. 13 under the heading Deans of Faculties under item (i) of Section 24 of the Gandhiji University Act, 1985, may be deleted and the name of Prof. K. Sreekantan, Principal, Law College, Trivandrum be substituted.

Under the heading Principals of First Grade Colleges under item (n) of Section 24, the name of Dr. C. Paul Varghese, Principal, Catholicate College, Pathanamthitta, included as Sl. No. 44 may be deleted and the name of Shri T. J. George, Principal, Catholicate College, Pathanamthitta be substituted.

The Notification No. GS3-492/85 dated 3-6-1985 will stand modified to the above extent.

By order of the Governor/Chancellor,

N. Krishnan Nair,
Secretary to Governor/Chancellor.

Governor's Secretariat,
Raj Bhavan, Trivandrum.

33/3420/J.

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GOVERNMENT OF KERALA

Home (SS. A) Department

NOTIFICATION

(VI)

No. 52732/SSA1/85/Home *Dated, Trivandrum, 12th August,* 1985.

S. R. O. No. 1125/85.—In exercise of the powers conferred by clause (a) of section 2 of the Kerala Essential Services Maintenance Ordinance, 1985 (41 of 1985), the Government of Kerala hereby declare the following service also under the Government specified in the Schedule as essential service for the purposes of the said Ordinance.

THE SCHEDULE

All Staff working under the Chief Security Officer, Government Secretariat, Trivandrum.

33/3423/M.C.

(VII)

No. 52732/SSA1/85/Home *Dated, Trivandrum, 12th August,* 1985.

S. R. O. No. 1126/85.—In exercise of the powers conferred by sub-section (1) of section 3 of the Kerala Essential Services Maintenance Ordinance, 1985 (41 of 1985), the Government of Kerala being satisfied that it is necessary in the public interest so to do, hereby, prohibit strike in the following essential service declared as such by Notification (VI) No. 52732/SSA1/85/Home dated the 12th August, 1985.

ESSENTIAL SERVICE

All Staff working under the Chief Security Officer, Government Secretariat, Trivandrum.

By order of the Governor,

V. RAMACHANDRAN,
Chief Secretary to Government.

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Government of Kerala
1985

Reg. No. KL/TV(N)/12



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EXTRAORDINARY

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NOTICE

UNDER SECTION 9 (5) OF THE KERALA LAND ACQUISITION ACT, 1961
(ACT 21 OF 1962)

No. A-945/83. *5th August* 1985.

Notice is hereby given that the Government intend to take possession of the lands mentioned in the list below, which are required for a public purpose under the Kerala Land Acquisition Act, 1961 (Act 21 of 1962). All persons interested in the lands are required to appear in person or by authorised agent on the date, time and place noted below and to state/put in a statement in writing signed by themselves or their agents showing the nature of their respective interests in the lands and the amount and particulars of their claim to compensation for such interests in the lands and their objections, if any to the measurements made under section 8 of the Act.

Note:—If the persons interested refuse to make a claim to compensation or omit without sufficient reasons, to make such claim, the amount to be awarded by the Court, in the event of a reference being made to it on application made by them shall in no case exceed the amount awarded by the Collector under section 11 of the Act.

താഴെ കൊടുത്തിരിക്കുന്ന ലിസ്റ്റിൽ പറഞ്ഞിട്ടുള്ളതും, 1961-ലെ കേരള സ്ഥലമെടുപ്പ് ആക്റ്റ് (1962-ലെ 21-ം ആക്റ്റ്) പ്രകാരം ഒരു പൊതുകാര്യത്തിന് അതായത് എറണാകുളം-ആലപ്പുഴ ബ്രോഡ്ഗേജ് റെയിൽവേ ലൈൻ നിർമ്മിക്കുന്നതിന് ആവശ്യമായിട്ടുള്ളതുമായ ഭൂമി കൈവശപ്പെടുത്തുവാൻ സർക്കാർ ഉദ്ദേശിക്കുന്നുവെന്ന് ഇതിനാൽ നോട്ടീസ് നൽകിയിരിക്കുന്നു. പ്രസ്തുത ഭൂമിയിൽ അവകാശബന്ധമുള്ള എല്ലാപേരും നേരിട്ടോ, അധികൃത ഏജന്റുമൂലമോ താഴെ പറയുന്ന തീയതിയിലും സമയത്തും സ്ഥലത്തും ഹാജരാകുകയും, ഭൂമിയിൽ അവരോരോരുത്തർക്കുമുള്ള അവകാശബന്ധങ്ങളെ സംബന്ധിച്ചിടത്തോളം നഷ്ടപ്രതിഫലത്തിന് അവർക്കുള്ള തർച്ചയുടെ

തുകയും വിവരങ്ങളും ആക്റ്റ് 8-ാം വകുപ്പുപ്രകാരം എടുത്തിട്ടുള്ള അളവു സംബന്ധിച്ച് വല്ല ആക്ഷേപവുമുണ്ടെങ്കിൽ അതും ഏതാണെന്ന് കാണിച്ചുകൊണ്ട് പ്രസ്താവന ചെയ്യുകയും അവരോ അവരുടെ ഏജൻറുമാരോ എഴുതിപ്പിട്ട് ഒരു സ്റ്റേറ്റുമെൻറ് സമർപ്പിക്കുകയും ചെയ്യണമെന്ന് അവരോട് ആവശ്യപ്പെടുന്നു.

കുറിപ്പ്—അവകാശബന്ധമുള്ളവർ നഷ്ടപ്രതിഫലത്തിന് തേർച്ചചെയ്യുവാൻ കൂട്ടാക്കാതിരിക്കുകയോ, മതിയായ കാരണങ്ങളില്ലാതെ അങ്ങനെ തേർച്ചചെയ്യുവാൻ വീഴ്ച ചെയ്യുകയോ ചെയ്യുന്നപക്ഷം അവരുടെ അപേക്ഷയിൻമേൽ കോടതിക്ക് റഫറൻസ് അയയ്ക്കുന്ന സംഗതിയിൽ കോടതി വിധിച്ചുകൊടുക്കേണ്ട തുക യാതൊരു സംഗതിയിലും ആക്റ്റ് 11-ാം വകുപ്പുപ്രകാരം കളക്ടർ വിധിച്ചുകൊടുക്കുന്ന തുകയിൽ കവിയാൻ പാടില്ലാത്തതാകുന്നു.

ആക്ഷേപം, സ്റ്റേറ്റുമെൻറ് മുതലായവ ഹാജരാക്കേണ്ട തീയതി—18-9-1985.

സമയം—രാവിലെ 10 മണി.

പൊന്നുംവില ആഫീസിന്റെ വിവരം—സ്പെഷ്യൽ തഹസീൽദാർ (റെയിൽവേ സ്ഥലമെടുപ്പ്) ആഫീസ്, ചേർത്തല.

SCHEDULE

District—Alleppey.

Taluk—Shertallai. Village—Aroor.

Block No. 15

Sl. No.	*Survey No.*	*Description*	*Extent* *A.*	*Sq. m.*
1	277/8A2B	Dry	09	60
2	284/12	„	04	05
3	284/18	„	02	43
4	284/13-1	„	02	83

(Sd.)

Shertallai. *Special Tahsildar,*
(Land Acquisition) Railways.

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